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# International Convention for the Protection of All Persons from Enforced Disappearance

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**Committee on Enforced Disappearances**
**Ninth session**

**Summary record (partial)* of the 141st meeting**
Held at the Palais des Nations, Geneva, on Tuesday, 8 September 2015, at 10 a.m.

*Chairperson:* Mr. Decaux

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* No summary record was prepared for the rest of the meeting.

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*The meeting was called to order at 10 a.m.*

**Consideration of reports of States parties to the Convention** (*continued*)

*Initial report of Iraq* (continued) (CED/C/IRQ/1; CED/C/IRQ/Q/1 and Add.1)

*1. At the invitation of the Chairperson, the delegation of Iraq took places at the Committee table.*

2. **Mr. Ismail** (Iraq) said that the Popular Mobilization Forces had been established in response to a call from religious authorities in Iraq for people from all sectors of society to take up arms and counter the threat posed by the terrorist group ISIL, which had occupied areas in the north and west of the country and had even encroached upon Baghdad. The Popular Mobilization Forces had been in existence for a year and, fighting alongside the regular Iraqi army, had driven back ISIL and contained it within certain areas. With support from coalition forces and the international community, the fight to eradicate the group altogether continued. In view of the important role being performed by the Popular Mobilization Forces, steps were being taken to incorporate them into the framework of the Iraqi army itself.

3. The many crimes being committed by ISIL included enforced disappearance. At Camp Speicher, 1,700 unarmed soldiers had fallen into the hands of the terrorist group and nothing more had been heard of them since. Subsequently, when the city of Tikrit had been liberated from ISIL, a number of the persons who had been arrested had admitted that the soldiers had been killed and their bodies buried in mass graves or thrown into the river. The Government committee that had been set up to investigate cases of enforced disappearance was working to gather all the available information and identify those responsible. The committee had succeeded in discovering the sites of three mass graves and was working to identify the bodies of the victims and return their remains to their relatives.

4. **Mr. Ameen** (Iraq) said that, in Iraq, proposed legislation had to pass through a number of stages before becoming law. Bills put forward by a ministry were presented to the Council of Ministers before being submitted to the parliament, where they were examined by specialized committees prior to being debated in the Council of Representatives and going through a three-stage voting process. Only then could new legislation be signed by the President and published in the Official Gazette, at which stage it would pass into law. The exact wording of the bill to combat enforced disappearance was being carefully reviewed by government experts, and the bill had therefore not yet been promulgated. No piece of legislation could be abrogated or amended unless it had already passed into law.

5. Once ratified, an international treaty entered into force in Iraq by means of the enactment of a national law, which had to pass through the stages that he had just described. The courts applied Iraqi law and therefore took into account the provisions of international treaties which had legal force in the country. Having reviewed numerous judgements rendered by Iraqi courts, he had found no instances in which they had made direct reference to an international treaty, since judges preferred to base their decisions on national, customary and case law.

6. No one could be arrested by a member of either the armed forces or any law enforcement agency without a warrant from an investigating judge in which the name of the person concerned and the reasons for the arrest were clearly stated. Investigating judges were appointed only after completing four years of legal study, including one year devoted to the subject of human rights. Given the nature of operations against terrorist groups in Iraq, events often took place very quickly and, although arrest records were kept, they were compiled by a number of different authorities around the country, and there was no unified, readily accessible registry of

arrest records. In order to rectify that situation, the Council of Ministers had issued Administrative Order No. 57 in 2014. That Order provided for a centralized electronic registration system which could be consulted by all parties concerned and which would include the name of the person arrested, the offence with which he or she was charged, the date of arrest and the place of detention. Order No. 57 alone would not be sufficient to resolve the underlying problem, but its implementation would provide certain safeguards for arrested persons and would further the Government's efforts to ensure the fulfilment of the country's international obligations.

7. In the case of a conflict between two laws, the Iraqi judiciary followed the civil law principle whereby a later legal text superseded an earlier legal text. Once a law to implement the Convention had been enacted, there would be no distinction between it and other national legislation. The fact that its provisions concerned a fairly small number of the cases brought before the Iraqi courts did not mean that the Convention would be disregarded. In fact, the Ministry of Human Rights had been established, and human rights divisions set up in other ministries, in order to help Iraqis understand that their rights were protected not just by national legislation but also by an international system of human rights to which Iraq belonged.

8. As the Committee was fully aware, the terrorist groups currently operating in the Middle East often killed the men whom they captured and, consequently, the majority of victims of enforced disappearance were women and children. In Iraqi society, offences against women and children were considered to be particularly reprehensible and often gave rise to harsh responses, including honour crimes. Nonetheless, in cases of enforced disappearance, the law was applied equally and the same penalties imposed, regardless of whether the victim was a man or a woman, a soldier or civilian, a Muslim or a Christian.

9. Security and law enforcement officials in Iraq were not allowed to enter into service until they had received appropriate human rights training. Since, under the current circumstances, the Iraqi armed forces were obliged to operate, not on an isolated front line against the army of another State, but on the streets of Iraqi towns and cities, the occurrence of human rights violations was conceivably more likely, and the authorities had taken steps to ensure that training programmes focused on the protection of human rights, the reduction of collateral damage and the proper treatment of persons arrested in the course of security operations.

10. Under Iraqi law, a disappeared person could be declared legally dead four years after the authorities had received official notification of the disappearance. An official declaration of death allowed the person's relatives to exercise their prerogatives with respect to such matters as inheritance, pension rights and remarriage.

11. **Ms. Al-Juboori** (Iraq) said that the authorities were working to identify the persons responsible for enforced disappearances under the former regime and to bring them to justice. As of the end of 2014, more than 37,000 persons had received compensation through the Martyrs Foundation and more than 48,000 through the Political Prisoners Foundation. Compensation was sometimes monetary in nature — as, for example, when the disappeared person had been a breadwinner — and, in other cases, took the form of assisted access to education or to posts in government offices. Article 21 of the draft bill to combat enforced disappearance also provided for redress for victims of enforced disappearance. The Ministry of Human Rights had compiled information on about 16,400 cases of enforced disappearance, most of which had occurred under the former regime. A committee had been formed to conduct investigations on the basis of information provided to the Ministry of Foreign Affairs by the Working Group on Enforced or Involuntary Disappearances. Thus far, it had been possible to determine the fate of 2,735 persons.

12. As for the question regarding the conformity of the Iraqi Criminal Code with article 10 of the Convention, any Iraqi national who was suspected of having committed or having been an accessory to a crime of enforced disappearance that had occurred abroad was subject to Iraqi criminal law. Such persons could also be prosecuted abroad under the criminal law of the country in which they resided. A foreign national residing in Iraq who was suspected of committing a crime in Iraq was also subject to Iraqi criminal law. No favouritism was shown to members of the armed forces in the course of judicial investigations; the Military Code of Criminal Procedure outlined a detailed procedure for such investigations that provided for independent oversight.

13. As part of the reconciliation process, the Amnesty Act of 2008 provided for the release from prison, exoneration and reintegration into society of certain persons who had been arrested or who were awaiting trial. Act No. 78 of 2008 provided for the court appointment of a guardian for children whose father had died. Minors involved in crimes of enforced disappearance were placed under the authority of the juvenile police, were brought before a juvenile court and were subject to investigation by a juvenile court judge. If charged, minors could not be tried until they had undergone psychological testing. Minors were not held in the same cells as adult offenders.

14. Section 30 of the Prison Code provided that prisoners awaiting trial were entitled to contact their relatives and receive visits from them, obtain legal assistance and meet with their lawyer without police intervention. They could read books, watch television, request a private cell, receive medical attention and were presumed innocent until proved guilty. Prisoners could also lodge a complaint directly with the prison inspectorate without having to go through the central prison authority. Complaints were investigated, and an effort was made to respond to them without delay.

15. **Mr. Al-Alusi** (Iraq) said that consideration was being given to the possibility of recognizing the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-State communications pursuant to articles 31 and 32 of the Convention. The culture of human rights in Iraq was not yet sufficiently mature, however, for the population to have a full understanding of the domestic procedures to be followed when filing complaints, and Iraqi legislation did not yet clearly specify the criteria for exercising jurisdiction over human rights violations. However, an office had been set up in the General Secretariat of the Council of Ministers to receive complaints and to refer them to the proper authorities. Requests from the Committee on Enforced Disappearances for information from Iraq concerning communications were sent to the Ministry of Foreign Affairs, which transmitted them to the relevant authority: the General Secretariat of the Council of Ministers, the Supreme Judicial Council, the Ministry of the Interior or the Ministry of Defence.

16. The Ministry of Human Rights had been dissolved by decision of the Council of Ministers on 16 August 2015, along with several other ministries, as part of an urgent governmental reform which had been approved by the parliament. The General Secretariat of the Council of Ministers had subsequently set up human rights divisions in all ministries and governorates. Those divisions were responsible for ensuring the fulfilment of the country's international human rights obligations, tracking human rights violations and promoting a culture of human rights.

17. The Iraqi High Commission for Human Rights had been established under Act No. 53 of 2008 pursuant to article 102 of the Iraqi Constitution of 2005 and in accordance with the Paris Principles. Its mandate included ensuring respect for the human rights protected by the Constitution and the international human rights conventions to which Iraq was a party, coordinating measures for promoting human rights on the part of governmental institutions and working with civil society

organizations active in the field of human rights in Iraq. The Commission was empowered to receive complaints from individuals, groups and NGOs, verify the validity of complaints, carry out preliminary investigations, and refer cases to the Public Prosecution Service for appropriate legal action. No complaints had been submitted by the Iraqi High Commission for Human Rights directly to the Ministry of Justice or the Ministry of the Interior, but the Commission had forwarded confidential correspondence concerning missing persons to the Public Prosecution Service. The Commission had received 14 complaints in 2014 and 29 complaints in 2015.

18. **Mr. Alatiyyah** (Iraq) said that, even though crimes of enforced disappearance that had been committed in areas where ISIL held sway were outside the State's control, the Central Criminal Court of Iraq was receiving and compiling thousands of reports, complaints and communications concerning such crimes, and some offenders had been convicted. Thus, the Iraqi judiciary was already exercising its jurisdiction to investigate those crimes in accordance with article 3 of the Convention, as well as in accordance with Human Rights Council resolution S-22/1, which called upon the Government of Iraq to ensure that all perpetrators were brought to justice.

19. Some 3,500 corpses found in mass graves in various parts of Iraq had been identified. When mass graves were opened, the remains were exhumed and documented, appropriate scientific techniques were used to preserve samples, and the records were transmitted to the Central Criminal Court. Using a biological database containing information provided by relatives of deceased persons and DNA profiling, forensic specialists worked to identify the victims. When the remains of a deceased person were identified, the family was provided with a death certificate, informed of the burial site and offered the possibility of having the corpse exhumed for reburial elsewhere. Not enough forensic doctors to perform that kind of work were available in Iraq. The Ministry of Health was attempting to secure the services of more forensic doctors within available resources. The Government had requested technical assistance with DNA testing of the victims of the Speicher Camp massacre, as well as other cases specified in a Ministry of Foreign Affairs memorandum to the United Nations Assistance Mission for Iraq in Baghdad.

20. Regarding the Committee's question concerning the steps taken to ensure that persons who violated the Foreigners Residency Act of 1978 were not subjected to enforced disappearance when being deported, it should be noted that the bill on enforced disappearance reproduced the text of article 16 of the Convention, which addressed that issue. Article 10 of the bill prescribed a penalty of 10 years' imprisonment for perpetrators of enforced disappearance. The penalty increased to life imprisonment if the victim of the offence was a child or a woman.

21. **Mr. Zebari** (Iraq) said that the Kurdistan Regional Government had made every effort to support the peaceful coexistence of all ethnic and religious groups in the region but was facing a number of obstacles, including an economic crisis and the increasing security threat posed by ISIL. Its military units, security forces and institutions were under the authority of the Ministry of Peshmerga Affairs. The duty of the Peshmerga forces was to defend the Kurdistan Region and to provide support to the federal Iraqi forces in countering acts of aggression and terrorism. An International Crisis Group report had questioned the structure and legality of the Peshmerga forces, claiming that they were a decentralized militia instead of a legitimate security force. The Ministry of Peshmerga Affairs Act of 2007 set out the duties and structure of the Ministry, however, and a 2007 presidential decree had authorized the establishment of a command department to oversee and administer the affairs of all the country's security forces. Although the Peshmerga forces were at the forefront of the war against ISIL, they had far fewer weapons than needed, had suffered thousands of casualties since early 2014 and were struggling to contain ISIL.

22. Allegations that the Yazidis had an armed militia were untrue; they had in fact an official force which was attached to the Ministry of Peshmerga Affairs. The Government stood ready to investigate any reports of abuses, and any individual found to be guilty of misconduct would be punished in accordance with the law. Peshmerga forces had not razed any Sunni Arab villages. After the liberation of certain areas from ISIL control, evidence had shown that the majority of the homes that had been demolished had in fact belonged to Kurds, whereas Arab-owned houses had been left largely unscathed. Most of the houses destroyed in the town of Sinjar, which was still under ISIL control, had been inhabited by Kurds as well. Acts of vandalism had been committed after the liberation of some areas, but not in a systematic or organized way.

23. Internally displaced persons in the Kurdistan Region had access to health-care facilities in the camps that had been set up to house them and to public hospitals. Some hospitals had expanded their obstetric departments to meet the needs of displaced and refugee women. The Kurdistan Regional Government was working to ensure that reproductive and other health-care services for displaced persons met international standards.

24. Since June 2014, 322 people suspected of terrorism had been detained and processed by the Anti-Terrorism Department before being transferred to detention facilities at Arbil: 83 had since been released and 239 remained in those facilities. Under the Anti-Terrorism Act, ISIL detainees were permitted to see lawyers and family members and were guaranteed a fair trial. Representatives of the International Committee of the Red Cross had visited many of the detention centres and made contact with all the prisoners, while Human Rights Watch had been invited to do the same.

25. Many members of the Yazidi community had been relocated in August 2014 to the provinces of Arbil, Kalar, Dahuk and Sulaymaniyah, but a large number of women and children had subsequently been kidnapped by ISIL and forced into slavery. Current data suggested that 5,670 Yazidis had been kidnapped, of which 1,035 had escaped or been rescued. The Kurdistan Regional Government set aside a substantial portion of its budget for paying ransoms in order to secure the release of Yazidis. After people had been rescued, cash assistance was urgently needed. United Nations monitoring groups had approved some 29,400 cases for cash assistance as at February 2015. Such assistance was distributed on a needs basis. In March 2015, the parliament of the Kurdistan Region had earmarked US$ 141,685 for the reintegration of vulnerable Yazidi returnees. On 29 August 2014, the Ministry of Natural Resources had expanded the Kurdistan Oil and Gas Humanitarian Initiative to include internally displaced persons, and US$ 15 million in donations from oil companies had been received for that purpose.

26. Once the immediate needs of rescued Yazidis had been met, they required legal assistance. The highly beneficial Immediate Response Plan for the Kurdistan Region was helping to meet the needs of internally displaced persons, including Yazidi returnees and escapees, by hiring health professionals and equipping public health facilities. Health education sessions were being provided to thousands of internally displaced persons in order to teach them about the importance of hygiene and reproductive health services in their new environments.

27. The United Nations Assistance Mission for Iraq had visited numerous detention centres in the Kurdistan Region and interviewed detainees, and the Kurdistan Regional Government welcomed representatives of international organizations that wished to monitor conditions of detention there. Once in custody, a detainee could be held for up to 15 days while the investigation was finalized and a hearing held. If further evidence was required before a case went to trial, the investigation period could be extended by court order. The Ministry of the Interior regularly provided the authorities with lists of

any detainees who had been held for more than 6 months pending trial. The Kurdistan Regional Government had no secret prisons and treated all detainees as provided for by law. The Kurdish parliament had passed a law that specifically prohibited the ill-treatment of detainees, including those arrested on charges of terrorism.

28. Pursuant to the Iraqi Constitution, any confession made under duress could not be used in a court of law. Torture was prohibited in the Kurdistan Region, and all allegations of torture or abuse in its prisons were investigated. Any staff member of the Ministry of the Interior or of the Region's security forces who failed to report complaints of mistreatment or torture would face legal action. Investigative committees had recently been set up by the Ministry of the Interior to follow up on prisoners' complaints of mistreatment.

29. In early 2015, 520 prison staff and officials and 1,500 members of the public, including lawyers, judges, NGO representatives, council members and journalists, had received training on inmate rights from the Justice Network for Prisoners. Investigating judges routinely sent a representative to participate in investigations being conducted by security forces. The detention facilities run by the security forces were primarily used for persons suspected of terror-related offences and serious felonies. They were designed to hold suspects in pretrial detention, pending the completion of criminal investigations and court proceedings. Security agents then transferred convicted prisoners to a prison supervised by the Ministry of the Interior to serve their term.

30. **Mr. Qarawlus** (Iraq) said that the coalition forces that had arrived in Iraq after the fall of the Baath regime in 2003 had assisted with the collection of DNA samples. In 2004, the United States had provided DNA processing equipment and had helped Iraq to establish a forensics department. Experts from the United Kingdom and Australia had then trained Iraqi personnel to use that equipment. The Forensics Department was currently processing 480 cases and 67 investigations. DNA-based research was, however, extremely costly, and budget cuts had seriously reduced the Department's ability to conduct such investigations. Some 120 million Iraqi dinars had been earmarked for DNA-based investigations, and the Department in Baghdad was working closely with its counterpart in the Kurdistan Region to conduct the necessary research.

31. **Mr. Ameen** (Iraq), adding to his colleague's reply to Ms. Janina's question regarding penalties for the enforced disappearance of women and children, said that, although there were currently no specific provisions concerning penalties for perpetrators of enforced disappearance, such acts were treated as an aggravating circumstance.

32. **Mr. Hazan** said that the Committee had received reports of the enforced disappearance of some 200,000 persons since 2003. The State party's report and the delegation's replies had provided the Committee with useful insights into the Iraqi legal system, but the principles governing the judiciary and the legal system did not tally with the actual practices reported by various sources. He appreciated the fact that the State party understood the need to pass a specific law on crimes of enforced disappearance, in accordance with article 4 of the Convention, but the point should be made that such a law could also be used as a foundation for efforts to ensure compliance with all the provisions of the Convention.

33. The issue of secret detention was of particular concern, as it appeared to be widespread. Closer scrutiny was called for in order to ensure that further cases of enforced disappearance did not occur. It also appeared that, of the thousands of allegations of enforced disappearance that had been lodged, only five cases had actually come to trial and, in many of the cases that were under investigation,

defendants' claims that they were following the orders of a superior threatened to derail the legal proceedings. The Iraqi Government's efforts to set up a witness protection system and to establish complaint and redress procedures were commendable, but further efforts would be needed in order to comply with article 24 of the Convention. He hoped that the current dialogue would result in the further development of specific legal norms dealing with enforced disappearance that would, for example, do away with the requirement that a certificate of presumption of death had to be issued before family members could exercise their property and inheritance rights.

34. **Mr. Huhle** said that he shared Mr. Hazan's concerns and asked which bodies had assumed the responsibilities of the former Ministry of Human Rights in respect of cases of enforced disappearance.

35. **Mr. Ismail** (Iraq) said that he wished to reiterate his country's full commitment to protecting and strengthening human rights in Iraq with the help of international mechanisms and to working with the Committee. His delegation was grateful to the Committee and would await the Committee's recommendations with great interest. The Iraqi delegation would provide replies to any outstanding questions within 48 hours.

36. **The Chairperson** said that Iraq was one of the first countries to ratify the Convention but that its ratification was just a starting point for the work required to meet the real challenges involved in implementing the Convention and monitoring compliance. He welcomed the delegation's pledge to provide written responses within 48 hours and looked forward to continuing the Committee's constructive dialogue with the State party and to receiving replies to any further questions which the Committee might wish to ask.

*The discussion covered in the summary record ended at 12.10 p.m.*